No. 14/13/87-6 Lab. /655. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Child Development Project Officer, Madhosinghana, Sirsa *Versus* Jamil Ahmed.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 462 of 90

Date of receipt 4th December, 1989.

Date of decision 14th September, 1994.

SHRI JAMIL AHMED S/O LAL AHMED, H. NO. 310, HOUSING BOARD COLONY, SIRSA .. *Applicant*

versus

1. CHILD DEVELOPMENT PROJECT OFFICER, MADHOSINGHANA, SIRSA
2. PROGRAMME OFFICER, I.C.D.S. CELL, SIRSA .. *Management*

Present :

Shri H. S. Samagh for the workman.

Shri Sita Ram, ADA for the management. .. *Respondents*

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Jamil Ahmad and the above mentioned management for adjudication to this Court,—*vide* Labour Deptt. Letter No. HSR/269-89/51945—51, dated 27th November, 1989 :—

Whether termination of services of Jamil Ahmad is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Chowkidar on 13th November, 1987 and he worked as such upto 10th November, 1988 with few days break. According to him, he was again appointed as Chowkidar in I.C.D.S. Cell Sirsa on 11th November, 1988 and he worked as such upto 31st March, 1989, where after his services were terminated. The workman had claimed that termination of his services amounted to "retrenchment" and as provisions of Section 25-F and Section 25-G of the Act, were not complied with, the impugned order of termination of his services, was illegal and he is entitled to reinstatement with consequential benefits.

3. The two respondents filed separate written statements and Child Development Project Officer (hereinafter referred to as CDPO) Madhosinghana respondent No. 1 pleaded that the workman was appointed on 13th November, 1987 on the wages fixed by the Deputy Commissioner, Sirsa and that he had worked upto 10th November, 1988 and as regular candidate was appointed by the Director, Social Welfare, his services were dispensed with. The management, therefore, pleaded that the present case is covered under Section 2(oo) (bb) of the Act and that his services were terminated due to non availability of work.

Respondent No. 2 (Programme Officer, ICDS Cell, Sirsa) in his written statement admitted that the workman was appointed on 11th November, 1988 on the wages fixed by Deputy Commissioner, Sirsa and that he worked upto 31st March,1989 and as his further sanction was not renewed by the Director, so his services were not renewed for next financial year. Respondent No. 2 also pleaded that the present case did not amount to "retrenchment because this case fell under clause (bb) of Section 2(oo) of the Act. Several preliminary objections were also raised, as they are reflected in the following issues framed on 15th January, 1991 by my learned predecessor :—

(1) As per terms of reference.

(2) Whether the claim is not maintainable in view of preliminary objections No. 1 to 3 ?

(3) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri H. S. Samagh, A.R. of the workman and Shri Sita Ram, ADA, on behalf of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 :

5. The facts are not much indispute. It is the case of the workman that he has worked as Chowkidar from 13th November, 1987 to 10th November, 1988 under CIPO, Madhosinghana, at Sirsa and thereafter, from 11th November, 1988 to 31st March, 1989 under Programme Officer, ICDS Cell, Sirsa and these facts are admitted by the respondents in their respective written statements. The main plant of the management is that the services of the workman were terminated on the joining of regular candidate in pursuance of the conditions incorporated in the sanction issued by Director, Social Welfare (Ex. M-1) and that clause (bb) introduced in the amended definition of "retrenchment" is fully attracted to the facts of the present case. The working days of the workman are detailed in statement Ex. M-2 and it is manifest that the workman has worked for 361 days with some breaks as on 10th November, 1988, when a regular candidate Krishan Lal joined in pursuance of appointment letter Ex. M-3.

6. It is by now well settled that sub clause (bb) of Section 2(oo) of the Act, which were introduced in 1984 by an amendment, can not be so construed as to drastically restrict the orbit of the term of "retrenchment" and this clause (bb) being an exception, must be interpreted narrowly. It has been held by our own High Court in the authority reported as **Kurukshetra Central Coop. Bank Ltd.** *versus* **State of Haryana**, 1993(1) RSJ-763, that provisions of Section 2(oo)(bb) of the Act, are to be read alongwith Section 25-F and when the management allows the workman to continue in service with notional breaks and after the workman had put in 240 days in service in 12 months, it amounts to "unfair labour practice", if his services are terminated and it has been held in this authority that in that case. Section 25 (ii) would cover the case and the workman would be entitled to retrenchment compensation, if his services were to be terminated.

7. Coming to the facts of our case. It was provided in sanction Ex. M-1 that the creation of this post was for the year 1988-89, or till regular candidate joins. It was admitted by the workman that his services were terminated, when a regular candidate joined, obviously, in pursuance of appointment letter Ex. M-3. However, the fact remains that the workman was again appointed on 11th November, 1988 in I.C.D.S. Cell, Sirsa and I am told that the Programme Officer, ICDS Cell, Sirsa is the head of the office, while CDPO was subordinate to him. It is to be noted that only CDPO, Sirsa appeared as MW-1 in this case and none from ICDS Cell had appeared to butress the point that no sanction for the next financial year had been received, as alleged in written statement of respondent No. 2 and in the absence of evidence that there was no post after 31st March, 1989, the termination of services of the workman, amounted to "unfair labour practice" and as admittedly, the workman has completed more than 240 days service in preceeding 12 months, he was entitled to retrenchment compensation as well as notice. Admittedly, the provisions of Section 25-F of the Act were not complied with in this case. This was so admitted by Smt. Saroj Bala, MW-1, in her cross-examination.

8. In the light of discussion above, I hold that the termination of services of the workman was not proper and justified and the workman is entitled to reinstatement, with full back wages and other consequential benefits. The issue is answered accordingly.

Issue No. 2 :

9. This issue was not pressed by the A.R. of the management and was conceded to by him during arguments. This issue is, therefore, answered against the management.

Issue No. 3 (Relief) :

10. In view of my findings on the above issues, the termination of services of the workman is held illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefit. The reference is answered accordingly, with no order as to cots.

The 14th September, 1994.

B. R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 2094, dated 14th September, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Govt. Haryana Labour & Employment Deptt., Chandigarh for necessary action.

B. R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.